MONTANA LEGISLATIVE HISTORY

Chapter 164 19 75

Bill H 5 S _____ Original bill & history X C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-9	✓ C	Hearing Date(s)	3-12	✓ C
	1-17	✓ C		_____	___ C
	_____	___ C		_____	___ C
	_____	___ C		_____	___ C
Date Out	_____	___ C			

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

HOUSE BILL NO. 5

INTRODUCED BY STOLTZ, YARDLEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE LAWS RELATING TO RESIDENCE AND DOMICILE IN ORDER TO REMOVE SEXUAL DISCRIMINATION; AMENDING SECTIONS 23-3022, 75-8703, 75-8704 AND 83-303, R.C.M. 1947; AND REPEALING SECTION 36-102, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-3022, R.C.M. 1947, is amended to read as follows:

"23-3022. Residence, rules for determining. For registration or voting, the residence of any person shall be determined by the following rules as far as they are applicable.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person may not gain or lose a residence while a student at any institution of learning, while kept involuntarily at any public institution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation.

(3) A person in the armed forces of the United States may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a ~~man's~~ person's family resides is presumed ~~his~~ that person's place of residence. However, a ~~man~~ person who takes up or continues ~~his~~ a residence at a place other than where his family ~~resided~~ resides with the intention of remaining is a resident of the place where he

INTRODUCED BILL

HB.5

resides.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence.

(10) The term of residence must be computed by including the day of election."

Section 2. Section 75-8703, R.C.M. 1947, is amended to read as follows:

"75-8703. Presumptions as to domicile. Unless the contrary appears to the unit registering authority, it is presumed that:

(1) The domicile of a minor is that:

(a) ~~of--his--father;--or~~ of the parents, or, if one of them is deceased or they do not share the same domicile, of the parent with whom the minor customarily resides; or

~~(b)--of-his-mother-if-there-is-no-father;-or~~

~~(c)~~ (b) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state; or

~~(d)~~ (c) of the parent who has custody of the minor.

(2) ~~The-domicile-of-a-married-woman--is--that--of--her husband;--except-that-a~~ A resident ~~woman~~ student who marries a nonresident does not by that fact alone lose ~~her~~ resident status for tuition and fee purposes for a period of four (4)

years after ~~her~~ marriage.

(3) Except as provided in the next subsection, residence is not gained or lost because of relocation as a member of the armed forces of the United States.

(4) Residence may be gained by a member of the armed forces of the United States, his spouse, or his children by living in Montana for one (1) year, and complying with the provisions of this section.

(5) A new domicile is established by a qualified person if he is physically present in Montana with no intention to acquire a domicile outside of Montana.

(6) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(7) Montana high school graduates are resident students of the system for four (4) consecutive years of attendance if:

(a) they apply for admittance to the system within one (1) year after graduation; or

(b) their parents or the parent with whom they customarily reside have resided in Montana in one (1) of the two (2) years immediately preceding the graduation.

(8) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for his spouse or any dependent minor child or both. If such person meets the

requirement of full-time employment within the state of Montana and he files for the payment of Montana state income taxes, or files estimates of such taxes, or is subject to withholding of said taxes, and renounces his residency in any other state, and is not himself in the state primarily as a student, his spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate, so long as he continues his Montana domicile. In the administration of this paragraph, neither the full-time employee or spouse shall be eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse."

Section 3. Section 75-8704, R.C.M. 1947, is amended to read as follows:

"75-8704. Evidence as to domiciliary intent--changes in status. (1) To determine the domicile of a person, the units of the system shall apply the following rules:

(a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of nonMontana domicile.

(b) A person must intend to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of

evidence to the contrary:

(a) A written statement of the evidence shall be filed with the registering authority of the unit.

(b) Changes in classification shall be in writing signed by the registering authority, and shall take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if his parents or the parent with whom he customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile heretofore set forth.

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in his or his dependents classification for tuition and fee purposes unless he completes twelve (12) continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the executive secretary of the Montana university system:

(a) Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of his decision and a complete file on the student to the executive secretary.

HB5

(i) The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons.

(b) Within thirty (30) days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of his decision.

(c) The executive secretary's decision may be appealed to the regents if the regents agree to entertain such an appeal."

Section 4. Section 83-303, R.C.M. 1947, is amended to read as follows:

"83-303. Residence, rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.

2. There can only be one residence.

3. A residence cannot be lost until another is gained.

4. ~~The--residence--of--the-father-during-his-life,-and after-his-death-the--residence--of--the--mother,--while--she remains--unmarried,--is-the-residence-of-the-unmarried-minor children.~~ The residence of his parents, or if one of them

is deceased or they do not share the same residence, the residence of the parent with whom he customarily resides, is the residence of the unmarried minor child. In case of a controversy the district court may declare which parental residence is the residence of an unmarried minor child.

~~5.--The-residence-of-the-husband-is--presumptively--the residence-of-the-wife.~~

~~6.~~5. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

~~7.~~6. The residence can be changed only by the union of act and intent."

Section 5. Section 36-102, R.C.M. 1947, is repealed.

-End-

Judiciary

1975 house

JUDICIARY COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 5	An Act to change the laws relating to residence & domicile in order to remove sexual discrimination.	1/6/75	Stoltz	1/9/75	1/9 Deferred 1/17/75 DO PASS AS AMENDED	1/17/75
HB 6	An Act amending the laws relating to homesteads in order to remove sexual discrimination from such laws	1/6/75	Stoltz	1/9/75	DO PASS	1/9/75
HB 7	An act amending sections 94-5-503 and 94-5-6-3 RCM to remove certain sexual distinctions in the criminal law.	1/6/75	YARDLEY	1/9/75	Do PASS	1/9/75
HB 8	An act to be known as the 'Montana Code of Fair Practices' relating to the non-participation of the gov. of st of Mt. indiscrimination on the basis of race, color, etc	1/6/75	Stoltz	1/10/75	Referred to sub-committee DO PASS AS AMENDED	2/21/75
HB 10	An act to be known as the 'Uniform Parentage Act' relating to matters concerning the parent-child relationship, its establishment and its termination, amending sections, etc.	1/6/75 back in-1/29/75	Yardley	1/13/75	Referred to sub-committee 1/22/75 DO PASS AS AMENDED 2/24/75 Do PAA	1/24/75 2/24/75
HB 17	An act changing the primary election to the 2nd Tuesday in September by amending section 23-3301, R.C.M.	1/6/75 1/18/75	John Murphy	1/13/75	Action deferred 1/16/75 DO NOT PASS 1/20-to subcomite 1/22/75 DO NOT PASS	1/16/75 1/22/75

JUDICIARY COMMITTEE

January 9, 1975

The first meeting of the House Judiciary Committee of the 44th Legislative Session was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Thursday, January 9, 1975 at 9:00 AM. Representative Huennekens, Chairman, presided. All members were present.

Diana Dowling, staff attorney who will be working with the House Judiciary Committee was introduced by Chairman Huennekens.

Bills scheduled for hearing were House Bills Nos. 5, 6 and 7 and were taken in this order.

HOUSE BILL NO. 5 Representative Gail Stoltz, District #14 is chief sponsor of this bill removing discrimination in laws pertaining to residence and domicile. She stated all three bills scheduled for hearing today are the result of an Interim Study Commission to conform the laws to the Constitution as directed by House Joint Resolution No. 62 and Senate Joint Resolution No. 68 of the 43rd Legislative Session. The study on this bill was done to provide a residence for children with divorced parents.

Proponent Barbara Bennetts, representing the Helena Women's Political Caucus, stated the most common criticism of these bills is a question as to whether they could destroy societal roles. She stated a similar bill was developed in the last legislative session but did not pass because of concern for children. Her own personal experience is that if old law taken up in court it would be ruled unconstitutional.

Proponent Rosemary Zion explained that the basic idea with this bill was that you could no longer say a woman's residence was that of her husband by law. The child is a minor and could not choose his own residence.

No other proponents. No opponents. Hearing then opened to questions from committee members. Representative Lory questioned the use of "he" and "his" in the bill to which Ms. Zion explained that a rule of legislative drafting is the pronoun "he" includes both genders but "her" does not include "he". Following additional questions and discussion by committee members the hearing was closed.

HOUSE BILL NO. 6 Representative Gail Stoltz, District #14 is chief sponsor of this bill removing sexual discrimination from laws relating to homesteads. Purpose of this bill is to change the definition of domicile legally.

No proponents. No opponents. Hearing then opened to questions from committee members. Representative Kimble questioned how this law would affect university people. Representative Moore questioned the language of husband and wife acting together as "joint tenants", 33-127. Ms. Zion replied that when they act together it is as "a" head of house.

No further questions and hearing was closed.

HOUSE BILL NO. 7 Representative Dan Yardley, District #74, chief sponsor of this bill removing sexual distinctions in the criminal law stated this bill is part of a package of fourteen bills, seven of which are being introduced in the Senate and this bill deals with the Criminal Codes. He pointed out the portions of the present law which this bill changes.

No other proponents. No opponents. Representative Meloy stated the definition of sexual intercourse talks about male-female relationship. Ms. Zion stated that homosexual rape would be covered by this bill also. Following brief discussion the hearing was closed.

EXECUTIVE SESSION

HOUSE BILL NO. 5 Chairman Huennekens stated that if any committee member felt he needed additional time and information on a bill he could request the bill be deferred. Representative Moore requested this bill be deferred.

HOUSE BILL NO. 6 Representative Kimble moved DO PASS. Motion carried unanimously.

HOUSE BILL NO. 7 Representative Meloy moved DO PASS. Motion carried unanimously.

A motion to adjourn by Representative Kimble and seconded by Representative Moore carried. Meeting adjourned.

Herb Huennekens

HERB HUENNEKENS, CHAIRMAN

HH:pb

WITNESS STATEMENT

Name BARBARA Bennetts Lynch Date Jan. 9

Address 25 So. Benton, Helena Support ? ✓

Representing Helena Women's Political Caucus Oppose ? _____

Which Bill ? HB 5 Amend ? _____

Comments:

Please leave prepared statement with the committee secretary.

January 15, 1975

Mr. Herb Huennekens, Chairman
House Judiciary Committee
Capitol Building
Helena, Mt. 59601

Mr. Huennekens,

Enclosed is my written testimony on House Bill 5 proposed by Stoltz and Hardley.

Please forgive the typographical errors--if I correct them I will not get them in the mail today as I promised your secretary pursuant to our telephone conversation of Monday, January 13, 1975.

I am mailing you a copy of the NOW handbook under seperate cover as I state in my testimony.

I thank you very much for taking no further action untiltestimony is received, and believe testimony of others may also be mailed tomorrow, but the persons involved are apparently out of town, as I unable to reach them by phone during the last few days.

Sincerely,

Jean E. Zermeir

Mrs. C. L. (Jean E.) Zermeir
316 W. Montana St.
Lewistown, Mt. 59457

The vast majority of Montanans were totally unaware that a State ERA provision was contained in our new Montana Constitution which was passed in 1972. They depended upon the Constitutional Convention and the Montana Legislature to "do the right thing" and really represent their feelings.

Many people have spoken to me, expressing their dissatisfaction withtthe State Constitution in this regard. As a matter of fact, rather than see bills introduced to implement the State ERA, they strongly urge bills which would amend the State Constitution to eliminate the State ERA.

They believe women should receive "equal pay for equal work", and that existin laws which already guarantee should be enforced. Where were these people when the hearing for Interim Study by the Subcommittee on Judiciary was held last July? They were working diligently to (and were highly successful in) ~~xxxxx~~ secure the necessary signatures for a Referendum on the Federal ERA. Their efforts were thwarted by the ERA Ratification Council and the Montana Supreme Court, both of which totally ignored the U.S. Supreme Court decision in the Coleman v. Miller (193 case (207 U.S. 433) holding that the amending process is political in its ~~xxxxxxxx~~ entirety "and is not subject to judicial guidance, control or interference at any point."

The Depository Institutions Amendments Act of 1974 already requires that credit be more available to women. A State ERA will not help women in the employment fiel anymore than existing laws which are not being enforced would, and will not help i:

It is noted here that people listed as having given testimony before the Subcommittee on Judiciary in its Interim Study include representatives from the SOW (of Women) Council, NOW (National Organization of Women), AAUW (American Associatio of University Women) and two ERA Ratification Councils.

I submit on behalf of Montana Citizens to Rescind ERA, that~~none~~ of these group is representative of the majority, that the SOW Council uses tax money illegally t

Continued

Testimony of Mrs. C. L. Zermeir regarding House Bill5, on behalf of Montana Citizens to Rescind ERA (concluded)

promote Womens Lib, and that NOW hides behind its advertisemtns on the media which say "don't under-estimate the work power of women", while never mentioning its unpopular goals which are:

1. Lobbying for the ERA
2. Free abortion, sterilization and contraception
3. Government-funded free child-care centers for children
4. Pro-lesbian legislation
5. Elimination of laws which give preference to veterans
6. Elimination tax exemptions for churches and challenging church policies
7. Removing school text books which portray the "stereotype" of women in the home
8. Requiring schools to provide contraceptive and abortion counseling and women's lib programs
9. Eliminating women's exemption from the draft
10. A guaranteed annual income
11. Requiring business to assume the expense of providing "parent leave" for both parents instead of just maternity leave.

I am sending to Mr. Huennekens, under separate cover, a copy of the NOW handbook for verification of the foregoing goals.

Which is more important? To add women to the work force outside the home, regardless of whether the economy needs their services or whether they really need jobs? Or are children more important because they need mothers to love and care for them at home?

The more people are working, the more money there is available for spending, including taxes to finance "solutions" to the various crises. The rising demand is not from people who would <u>consume</u> the services of these working women, but is really a demand for public <u>spending</u>. Remember, if a women cares for her own children in her own home, no money changes hands, and hence no taxes are paid. A state antidiscrimination code providing equal pay and promotional opportunities is what is needed.

Respectfully submitted,

Jean E. Zermeir

Mrs. C. L. (Jean E.) Zermeir, on behalf of Montana Citizens to Rescind ERA

Testimony of Mrs. C. L. (Jean E.) Zermeir, as an individual, regarding House Bill 5 introduced by Stoltz and Yardley

FAMILY

Under House Bill 5, Section 4. Section 83-303, RCM 1947 as proposed by Stoltz and Yardley, the present rule number 5 which states "The residence of the husband is presumptively the residence of the wife" has been deleted.

As an individual in my own right, and also as the mother of six children, I am well aware that a child needs both a mother and a father. If the residence of the husband cannot be presumed to be the residence of the wife, the family is being encouraged to split up. Our laws should strengthen—not weaken—the family. Our great country's strength has always been its Christian foundation. However, our country is now in the most precarious position in which it has ever been during its entire history, precisely because of the threat to that foundation. If our country is to become strong again, then the family, the most basic unit of society, must be held intact, encouraged and strengthened.

Laws which weaken and allow separation of the family, give rise to easy divorce laws. Studies have shown that in states where easy divorce laws exist, many divorces occur on the spur of the moment, with no effort first having been made to resolve problems. Then when people have remarried, they realize too late that their first marriage was actually their best marriage. If laws do not encourage couples to separate, many of these people will solve their problems to the benefit of society as a whole. It is the child in broken homes who suffers from insecurity and must bear the brunt of the problems, and who is the most likely to continue the vicious circle of more broken homes when he or she reaches adulthood.

Separation and divorce of parents also contribute expensively to the excessive Welfare dollar load we are now forced to support with our tax dollars. What we need is a new sense of the family. Modern families need stronger ~~fathers~~ fathers This will help the mother in her role as a parent and authority figure. The empha needs to be shifted to the individual's welfare and well-being. Society as a

Testimony of Mrs. C. L. (Jean E.) Zermeir, as an individual, regarding House Bill 5 introduced by Stoltz and Yardley (Concluded)

BUSINESS

If the wife's residence is not presumed to be that of the husband, an economic burden will be placed on businesses. With the wife entering business transactions more and more frequently, a business must locate the wife more and more often. Ultimately, the additional expense involved in doing so will have to be born by the consumer in the form of higher prices for services.

CONCLUSION

I urge you to "make haste slowly" on this matter of deleting rule number 5, which at present states "The residence of the husband is presumptively the residence of the wife." Thorough knowledge of this proposition must be made available to the public, and the will of women who have not been aware of this proposed legislation must be considered; as well as the women of the AAUW, NOW, [redacted] SOW Councils, and others who have the use of funds and means which, though highly effective, do not represent the will of the majority of Montana women.

Respectfully submitted,

Jean E. Zermeir

Mrs. C. L. (Jean E.) Zermeir
316 W. Montana St.
Lewistown, Mt. 59457

EXECUTIVE SESSION

HOUSE BILL NO. 5 Chairman Huennekens stated that written testimony had been received from an opponent to this bill. This was passed around to all committee members. Representative Moore and Representative Vincent discussed the terminology of "domicile and residence". These are used or defined in over 1200 references in codes. Representative Moore's present thought is to put together a definition, he wouldn't resist dealing with this bill now. Following discussion Chairman Huennekens ruled the committee would suspend action on this bill for now.

HOUSE BILL NO. 70 A motion of DO PASS on this bill pertaining to sale of mortgaged chattels without the consent of the mortgagee was made by Representative Vincent. Motion seconded by Representative Scully. Motion carried unanimously.

HOUSE JOINT RESOLUTION NO. 6 Representative Meloy moved DO PASS. Motion seconded by Representative Anderson and carried unanimously.

HOUSE BILL NO. 44 Chairman Huennekens suggested to committee that this bill be held in abeyance until we see Senator Fasbender's bill. Representative Kimble stated he was bothered by this, that it gives Senator Fasbender's bill the advantage, suggested passing this out of committee and let them consider this bill in the Senate. Representative Meloy pointed out that Senator Fasbender's bill retained the language of the old constitution. Representative Scully stated he would like to amend this bill to hold the thirty day session to fiscal policy. Representative Yardley suggested the committee would have time to review this bill next week. Chairman Huennekens stated this bill would be held until next week.

HOUSE BILL NO. 5 Representative Meloy moved to amend on page 8, line 2 by inserting after the word "parent" the words "who has legal custody, or if neither parent has legal custody the parent". Representative Moore made a substitute motion to amend in this manner also on page 6, line 8 after the word "parent", page 4, line 19; page 3, line 15 and strike subsection (c), line 21 and page 3. Representative Yardley stated he had no objection to this amendment. Diana Dowling, staff attorney, suggested using the word "having" in place of "who has". Committee accepted this suggestion. Motion to amend carried unanimously. Representative Meloy moved DO PASS AS AMENDED. Representative Halvorson seconded and motion carried unanimously.

Meeting adjourned at 10:30 AM.

January 17

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 5

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE LAWS RELATING TO RESIDENCE AND DOMICILE IN ORDER TO REMOVE SEXUAL DISCRIMINATION; AMENDING SECTIONS 23-3022, 75-8703, 75-8704 AND 83-303, R.C.M. 1947; AND REPEALING SECTION 36-102, R.C.M. 1947."

Respectfully report as follows: That HOUSE Bill No. 5

Be amended in the introduced bill as follows:

1. Amend page 3, section 2, line 15.
Following: "parent"
Insert: "having legal custody, or if neither parent has legal custody the parent"

2. Amend page 3, section 2, subsection (c)
Strike: Subsection (c) in its entirety.

3. Amend page 4, section 2, subsection (b), line 19.
Following: "parent"
Insert: "having legal custody, or if neither parent has legal custody the parent"

4. Amend page 6, section 3, line 8.
Following: "parent"
Insert: "having legal custody, or if neither parent has legal custody the parent"

[illegible]

(continued on page 2)

January 17, 19 75

MR. .....

We, your committee on .....

having had under consideration ..... Bill No. .....

Respectfully report as follows: That ..... HOUSE ..... Bill No. ..... 5 .....

(Page 2

5. Amend page 8, section 4, line 2.
Following: "parent"
Insert: "having legal custody, or if neither parent has legal custody the parent"

AS SO AMENDED
DO PASS

1975

Senate 44th LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
5	3/5/75	3/12/75	3/13/75				3/12/75		
6	1/16/75	1/21/75	1/21/75				1/21/75		
7	1/16/75	1/21/75	1/21/75				1/21/75		
8	2/27/75	3/15/75	3/18/75					3/17/75	
10	3/7/75	3/15/75	3/24/75					3/19/75	
27	2/28/75	3/14/75	3/25/75					3/22/75	
31	1/20/75	1/28/75	2/4/75					2/1/75	
46	2/4/75	2/27/75	2/28/75						2/27/75
82	2/15/75	3/6/75	3/20/75					3/18/75	
99	1/27/75	2/1/75	2/6/75					2/5/75	
100	2/21/75	3/4/75	3/25/75					3/7/75	
102	2/10/75	2/28/75	3/5/75					3/4/75	
108	3/8/75	3/17/75	3/24/75					3/21/75	
110	2/4/75	3/7/75	3/13/75					3/11/75	
111	2/27/75	3/14/75	3/24/75					3/22/75	
118	2/1/75	3/5/75	3/6/75					3/5/75	
122	2/4/75	2/27/75	3/4/75					2/28/75	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

SENATE JUDICIARY COMMITTEE
March 12, 1975

The meeting was called to order by Senator Warden at 9:30 A.M. Senator Towe was absent and Senator Roberts arrived late. All other committee members were present.

The following bills were heard:

HB 5
HB 455
HB 613
HB 531

HB 5 -- HB 5, sponsored by Representative Gail Stoltz, District 14 was heard first. She stated that the bill, which removes sex discrimination from laws relating to residence and domicile was drafted by the interim subcommittee on equal rights and equality in the family. She added that the bill clarifies language relating to minors.

Ms. Jan Gerke, representing Women's Lobby, Inc. and the Helena Women's Political Caucus, added her support for the bill.

Ms. Rose Mary Rodgers, Helena, opposed the bill, saying that she was against making laws that prostitute marriage. She stated that quibbling over the word "domicile" in the codes is unnecessary. She submitted written testimony (attached).

HB 455 -- HB 455, sponsored by Representative Francis Bardanouve, District 6, was heard next. The purpose of the bill, he stated, was to require that Supreme Court Justices who concur in decisions of the court sign those decisions. He stated that the legislative branch of government must have its roll call votes recorded and he felt in this matter all branches of government should be required to operate similarly.

There were no further proponents and no opponents to the bill.

HB 613 -- HB 613, sponsored by Representative Bob Palmer of District 96, was heard next. Rep. Palmer stated that the purpose of the bill was to provide a penalty for failing to report adoptions and providing a penalty for providing adoptions without a license and providing that the Dept. of Social and Rehabilitation Services shall investigate adoptions that do not conform to requirements of the law.

John Frankino, representing the Catholic Church of Montana, stated that he had been involved in the adoption procedure area for 15 years and presented written testimony (attached)

HB 613 -- Jim Pippard, a social worker in the Human Services Bureau of the Dept. of Social & Rehabilitation Services, supported the bill and gave an example of an adoption in the "gray area" which would be affected by the bill in that a petition would be required to be sent to the department for review.

There were no further proponents and no opponents to the bill.

HB 531 -- HB 531, sponsored by Representative Mike Meloy, District 29, was heard next. Rep. Meloy stated that the purpose o the bill was to implement the right to know provisions of the Montana Constitution by guaranteeing the public the right to examine documents of public agencies. He stated that the bill was introduced last year by Rep. Greely, was passed in the House and killed in the Senate. He stated that the bill simply awards costs and attorney's fees to a plaintiff who wins a court case relating to access to public records.

George Remington, publisher of the Helena Independent Record, submitted written testimony in support of the bill (attached).

Sam Gilluly, representing the Montana Press Assn., added his support for the bill and submitted written testimony (attached).

Bill Sternhagen, representing himself, stated that he supported the bill if an amendment that he proposed (attached) were adopted.

In closing, Rep. Meloy stated that if the plaintiff loses his case he would be required to pay his own attorney's fees.

There were no further proponents and no opponents to the bill.

Following the hearing of bills, the Committee went into Executive Session.

EXECUTIVE SESSION

HB 5 -- Senator Cetrone moved that HB 5 be concurred in. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 455 -- Senator Turnage moved that HB 455 be concurred in. The motion was postponed to consider amendments.

Senator Greely made a substitute motion that HB 455 be amended by adding a new sentence at the end of the bill on line 15 (attached). WITH SENATOR ROBERTS AND SENATOR DRAKE VOTING NO, THE MOTION CARRIED ON A ROLL CALL VOTE.

ROLL CALL

Judiciary COMMITTEE

~~SECOND~~ HALF - ~~43rd~~ 44th LEGISLATIVE SESSION 1975 Date 3/2

	PRESENT	ABSENT	EXCUSED
Thomas E. Towe	X		
Joe R. Roberts	X		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown			
Glen L. Drake	X		
Jean A. Turnage	X		
Michael Greely	X		

NAME: [illegible] DATE: [illegible]

ADDRESS: 1517 S. Lawrence

PHONE: 443-5180

REPRESENTING WHOM? Concerned Citizen

APPEARING ON WHICH PROPOSAL: HB 5

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS:

Legislating laws that ignore or prostitute the full implication of marriage is poor legislation. Our concern should be to unite within the bonds of marriage rather than allow passage of a bill where we are more concerned over domiciling as each sees fit instead of acknowledging the responsibilities of both parties regarding offspring. When we demean men as procreators we demean our selves as the hearts of a unified domicile

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

HB5 Opposed

Rose Mary Rodgers
Concerned Citizen

Legislating laws that ignore or prostitute the full implication of marriage is poor legislation. Our concern should be to unite within the bonds of marriage rather than allow the passage of a bill where we are more concerned over domiciling when each sees fit instead of acknowledging the responsibilities of both parties regarding offspring.

When we demean men as breadwinners we also demean our role as the hearts of a unified domicile.

Please do not pass

SENATE COMMITTEE JUDICIARY

Date 3/18/75 House Bill No. 5 Time

NAME	YES	NO
THOMAS E. TOWE	x	
JOE R. ROBERTS	x	
V.E. CETRONE	x	
MARGARET S. WARDEN	x	
ROBERT J. BROWN	x	
GLEN L. DRAKE	x	
JEAN A. TURNAGE	x	
MICHAEL GREELY	x	

Secretary

Chairman

Motion: by Senator Cetrone - that HB 5 be concurred in.

(include enough information on motion--put with yellow copy of committee report.)

March 12 19 75

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 5

Respectfully report as follows: That HOUSE Bill No. 5

~~XXXXXXX~~ BE CONCURRED IN

HOUSE BILL NO. 5

INTRODUCED BY STOLTZ, YARDLEY, KIMBLE, BRADLEY, HUENNEKENS

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE LAWS RELATING TO RESIDENCE AND DOMICILE IN ORDER TO REMOVE SEXUAL DISCRIMINATION; AMENDING SECTIONS 23-3022, 75-8703, 75-8704 AND 83-303, R.C.M. 1947; AND REPEALING SECTION 36-102, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-3022, R.C.M. 1947, is amended to read as follows:

"23-3022. Residence, rules for determining. For registration or voting, the residence of any person shall be determined by the following rules as far as they are applicable.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person may not gain or lose a residence while a student at any institution of learning, while kept involuntarily at any public institution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation.

REFERENCE BILL

HB 0005/02

(3) A person in the armed forces of the United States may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a ~~man's~~ person's family resides is presumed ~~his~~ that person's place of residence. However, a ~~man~~ person who takes up or continues ~~his~~ a residence at a place other than where his family ~~resided~~ resides with the

intention of remaining is a resident of the place where he resides.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence.

(10) The term of residence must be computed by including the day of election."

Section 2. Section 75-8703, R.C.M. 1947, is amended to read as follows:

"75-8703. Presumptions as to domicile. Unless the contrary appears to the unit registering authority, it is presumed that:

(1) The domicile of a minor is that:

(a) ~~of--his--father;--or~~ of the parents, or, if one of them is deceased or they do not share the same domicile, of the parent HAVING LEGAL CUSTODY, OR IF NEITHER PARENT HAS LEGAL CUSTODY THE PARENT with whom the minor customarily resides; or

~~(b)--of-his-mother-if-there-is-no-father;-or~~

~~(c)~~ (b) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state; or

~~(d)-(c)---of-the-parent-who-has-custody-of-the-minor;~~

(2) ~~The-domicile-of-a-married-woman--is--that--of--her~~

~~husband;--except-that-a~~ A resident ~~woman~~ student who marries a nonresident does not by that fact alone lose ~~her~~ resident status for tuition and fee purposes for a period of four (4) years after ~~her~~ marriage.

(3) Except as provided in the next subsection, residence is not gained or lost because of relocation as a member of the armed forces of the United States.

(4) Residence may be gained by a member of the armed forces of the United States, his spouse, or his children by living in Montana for one (1) year, and complying with the provisions of this section.

(5) A new domicile is established by a qualified person if he is physically present in Montana with no intention to acquire a domicile outside of Montana.

(6) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(7) Montana high school graduates are resident students of the system for four (4) consecutive years of attendance if:

(a) they apply for admittance to the system within one (1) year after graduation; or

(b) their parents or the parent HAVING LEGAL CUSTODY, OR IF NEITHER PARENT HAS LEGAL CUSTODY THE PARENT with whom they customarily reside have resided in Montana in one (1) of the two (2) years immediately preceding the graduation.

(8) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for his spouse or any dependent minor child or both. If such person meets the requirement of full-time employment within the state of Montana and ~~he~~ files for the payment of Montana state income taxes, or files estimates of such taxes, or is subject to withholding of said taxes, and renounces his residency in any other state, and is not himself in the state primarily as a student, his spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate, so long as he continues his Montana domicile. In the administration of this paragraph, neither the full-time employee or spouse shall be eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse."

Section 3. Section 75-8704, R.C.M. 1947, is amended to read as follows:

"75-8704. Evidence as to domiciliary intent -- changes in status. (1) To determine the domicile of a person, the units of the system shall apply the following rules:

(a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.

(b) A person must intend to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary:

(a) A written statement of the evidence shall be filed with the registering authority of the unit.

(b) Changes in classification shall be in writing signed by the registering authority, and shall take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if his parents <u>or the parent HAVING LEGAL CUSTODY, OR IF NEITHER PARENT HAS LEGAL CUSTODY THE PARENT with whom he customarily resides</u> or legal guardian or person having legal custody completes the requirements for establishing domicile heretofore set forth.

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in his or his dependents classification for tuition and fee purposes unless he completes twelve (12) continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the

executive secretary of the Montana university system:

(a) Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of his decision and a complete file on the student to the executive secretary.

(i) The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons.

(b) Within thirty (30) days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of his decision.

(c) The executive secretary's decision may be appealed to the regents if the regents agree to entertain such an appeal."

Section 4. Section 83-303, R.C.M. 1947, is amended to read as follows:

"83-303. Residence, rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.

2. There can only be one residence.

3. A residence cannot be lost until another is gained.

4. ~~The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children.~~ The residence of his parents, or if one of them is deceased or they do not share the same residence, the residence of the parent HAVING LEGAL CUSTODY, OR IF NEITHER PARENT HAS LEGAL CUSTODY THE PARENT with whom he customarily resides, is the residence of the unmarried minor child. In case of a controversy the district court may declare which parental residence is the residence of an unmarried minor child.

~~5. The residence of the husband is presumptively the residence of the wife.~~

~~6.~~ 5. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

~~7.~~ 6. The residence can be changed only by the union of act and intent."

Section 5. Section 36-102, R.C.M. 1947, is repealed.

-End-